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grandfather but which he claimed never to have signed, whether one of the plaintiffs handed this note back to defendants and in doing so said that he had taken the note to defendants' grandfather and he had repudiated it and said it was a forgery was relevant and properly allowed.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1049-1055; Dec. Dig. § 358.\* 12 Va.-W. Va. Enc. Dig. 80; 14 Va.-W. Va. Enc. Dig. 916.]

**7. Sales (§ 358\*)—Action for Price—Evidence.**—In an action on notes for the price of a sawmill outfit, a question asked one of plaintiffs as to his knowledge concerning whether defendant D. sold any timber to his codefendants, S. Bros., to which the witness replied that he understood that he did sell a quantity of timber to S. Bros. for \$2,000, was admissible.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1049-1055; Dec. Dig. § 358.\* 12 Va.-W. Va. Enc. Dig. 80; 14 Va.-W. Va. Enc. Dig. 916.]

**8. Appeal and Error (§ 499\*)—Bill of Exceptions—Sufficiency—Review.**—A bill of exceptions to the admission of a letter in evidence, stating a general objection without any reason therefor, is not reviewable.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2295-2298; Dec. Dig. § 499.\* 5 Va.-W. Va. Enc. Dig. 374; 14 Va.-W. Va. Enc. Dig. 418; 15 Va.-W. Va. Enc. Dig. 361.]

Error to Circuit Court, Russell County.

Action by Cole Bros. against A. W. Davis and others. Judgment for plaintiffs, and defendant Davis brings error. Affirmed.

*W. H. Bird, H. L. Kidd, and S. B. Quillen*, all of Lebanon for plaintiff in error.

*Finney & Wilson*, of Lebanon, for defendant in error.

#### YELLOW POPLAR LUMBER CO. v. GOBLE.

Nov. 20, 1913.

[79 S. E. 1036.]

**1. Master and Servant (§ 265\*)—Negligence—Proof.**—The happening of an accident is not evidence of negligence by the master; that being an affirmative fact to be established by the injured servant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-908, 955; Dec. Dig. § 265.\* 9 Va.-W. Va. Enc. Dig. 721; 14 Va.-W. Va. Enc. Dig. 697; 15 Va.-W. Va. Enc. Dig. 658.]

**2. Master and Servant (§ 278\*)—Injury to Servant—Negligence**

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

—**Evidence—Sufficiency.**—The evidence offered to show negligence by a master must show more than a mere probability of negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.\* 9 Va.-W. Va. Enc. Dig. 726; 15 Va.-W. Va. Enc. Dig. 659.]

**3. Master and Servant (§ 90\*)—Master's Duties.**—An employer is not bound to foresee and obviate things which prudent men would not expect to happen.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 139; Dec. Dig. § 90.\* 9 Va.-W. Va. Enc. Dig. 667; 14 Va.-W. Va. Enc. Dig. 684; 15 Va.-W. Va. Enc. Dig. 644.]

**4. Master and Servant (§§ 276, 278\*)—Actions for Injuries—Sufficiency of Evidence—Negligence.**—Evidence, in an action by an employee for injuries sustained while making a tramway by a stump blown from the right of way striking him, held to show that defendant could not have reasonably anticipated or provided against the occurrence, and that it was an unavoidable accident.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 950-952, 954, 956-959, 960-972, 976, 977; Dec. Dig. §§ 276, 278.\* 9 Va.-W. Va. Enc. Dig. 726; 15 Va.-W. Va. Enc. Dig. 659.]

Error to Circuit Court, Dickenson County.

Action by Frank Goble, by his next friend, against the Yellow Poplar Lumber Company. Judgment for plaintiff, and defendant brings error. Reversed.

*J. C. Smith*, of Clintwood, *W. H. Rouse*, of Bristol, and *E. M. Fulton*, of Wise, for plaintiff in error.

*Sutherland & Sutherland* and *Chase & Daugherty*, all of Clintwood, for defendant in error.

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CROGHAN *v.* WORTHINGTON HARDWARE CO., Inc.

Nov. 20, 1913.

[79 S. E. 1039.]

**1. Frauds, Statute of (§ 103\*)—Contracts—Memorandum.**—A letter signed by the vendor of land stating that she would accept the offer made by complainant which was in writing is a sufficient memorandum to take the case out of the statute of frauds.

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. §§ 192-198, 200-208; Dec. Dig. § 103.\* 6 Va.-W. Va. Enc. Dig. 536; 14 Va.-W. Va. Enc. Dig. 483; 15 Va.-W. Va. Enc. Dig. 433.]

**2. Specific Performance (§ 53\*)—Right to Specific Performance—Imposition.**—Specific performance of a contract for the sale of realty

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.